IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.16400 of 2004

Between:

M/s. Mithra Medical & General Stores, 1-8-27/14, Main Road, Chikkadpally, Hyderabad - 20,
rep. by its Proprietor Sri A. Sridhar, S/o. Late A. Laxmi Narayana, aged 32 years, R/o. Hyderabad.

..... PETITIONER

AND

Government of India, Rep by its Additional Director General,
Government Health Scheme, Begumpet, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ, order or direction more particularly in the nature of Writ of Mandamus, declaring exclusion of the petitioner's bid from consideration as illegal and arbitrary and violative of Article 14 of the Constitution of India and direct the respondent authorities to consider the petitioner's bid as an eligible one and process the tender schedule duly including the petitioner's bid as eligible tender in accordance with law.

Counsel for the Petitioner: MR.M.VIJAYA SARATHI REDDY

Counsel for the Respondent: MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court, at the admission stage, made the following:

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THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 16400 of 2004

O r d e r:

The petitioner viz., M/s. Mithra Medical & General Stores, Chikkadpally, Hyderabad in effect seek a direction to the respondent to consider and process their tender schedule as eligible one in accordance with law, for supply of medicines/drugs to the Central Government Health Scheme (CGHS) dispensaries covered in Zone-V i.e. Himayatnagar & Kachiguda of Hyderabad city.

The petitioner states that the bid offered by them for supply of medicines/drugs to the Zone in question pursuant to the tender notice dated 02-08-2004 issued by the respondent, was made known as the lowest price quotation being 12.01% less than the maximum retail price quoted for various Medicines & Drugs, when all the tenders called for in respect thereof were opened by the respondent on 10-08-2004. It is alleged that though the tender of the petitioner emerged as the lowest quotation, the respondent is attempting to disqualify/eliminate it in preference to some other competing bidder. Though, it is stated that respondent has not passed any order indicating the grounds on which the bid of the petitioner has been rejected or excluded from consideration, the petitioner came to know that it has been disqualified on the following grounds.

1. The tender has not been signed on each and every page by the tenderer.

2. The tender bid has been separated from the schedules.

3. The petitioner did not produce warranty certificate indicating that it would supply only standard material or non-invalidated material during currency of the contract.

Hence, this writ petition.

Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the Central Government for the respondent.

The learned counsel for the petitioner submits that the grounds on which the petitioner's tender is sought to be disqualified, are untenable and perverse. He submits that inasmuch as nowhere in the tender documents, it is stipulated that the tenderer should sign on each and every page of the tender bid, non-signing on each page, cannot be taken as a ground for disqualifying the tender. Inasmuch as Clause-3 of the Tender Conditions stipulates that the bid security and bid price of the tender should be submitted separately in two envelops, the question of the petitioner submitting them together does not arise, and even assuming they were placed together, the condition being self-contradictory, cannot be enforced against the bidder to disqualify his tender. He submits that if the security bid was found to be defective, there was no warrant for the authorities to open the envelop containing the price bid, and since both envelops were opened by the authorities, no infirmity whatsoever was there in submitting of security bid or price bid. He submits that in the absence of any condition requiring submission of warranty certificate along with the price bid, non-enclosing the same along with the price bid cannot be taken as a ground to disqualify the tender, and more so when as per Clause 20, suggests submission of warranty certificate after supply of the medicines. He submits that except for the circumstances mentioned in Clause 2, on no other grounds a tender can be disqualified, and the grounds on which the petitioner's bid is sought to be disqualified not falling within the circumstances mentioned in Clause-2, the action of the respondent in seeking to disqualify the petitioner's bid is illegal and arbitrary, and more so when the petitioner in the submission of his bid, had substantially complied with the tender conditions.

Disputing the averments made in the affidavit filed in support of the writ petition, the respondent filed counter-affidavit. The learned Senior Standing Counsel for the Central Government while reiterating the counter-averments submitted that as per para-4 of the Tender Notice, the bidder is required to submit bid security and price bid separately in two envelops, which are again to be placed in a sealed cover. The petitioner instead of keeping them in the above manner, had kept the bid security amount along with the price bid envelope and removed the price bid page Nos.13 and 14 from the tender documents and enclosed them in another envelope, which is in violation of the instructions given in the tender notice, and thereby, his tender was disqualified at the stage of opening of the tenders itself. He further submitted that the tender documents and the schedule to the bid, being legal documents, are required to be signed on each and every page by the Proprietor or the Partners in case of partnership firm as token of acceptance of the conditions of tender, and there need be no specific instruction in that regard. He further submitted that as per Item-20 in page 8 of the tender document, the bidder shall furnish the prescribed warranty certificate along with the quotation, but the petitioner failed to do so, and therefore, the tender of the petitioner was liable to be disqualified on this ground also. At the time of opening the tenders, the petitioner was informed of the non-compliance of the above tender requirements, and when the tender of the petitioner was ineligible to be opened, whether the tender of the petitioner being the lowest quotation would not matter, for the petitioner by failing to comply with the tender conditions, which were required to be complied with all the tenderers, had earned disqualification, and no exception can be taken to the action of the

respondent in seeking to disqualify the tender, more so on the grounds mentioned above, and particularly when tender conditions in the Tender Notice itself reserved the right to reject any tender without assigning any reasons, in the respondent. The learned Senior Standing Counsel for Central Government submitted that the scope of judicial review in matters relating to tenders is very limited, this Court in exercise of its jurisdiction shall not interfere, and in support of this argument, he placed reliance on the judgement of the apex Court in **Tata Cellular v. Union of India**, and of this Court in **Vijayashanti Instruments Corpn. v. Directorate of W.D. & C.W., Government of A.P.** and **TCI Seaways Ltd. v. FCI, Regional Officer, HACA Bhavan, Hyd**.

In matters relating to tenders and award of contracts, the power of judicial review of an administrative action by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, it is well-settled and needs no emphasis, is limited to illegality, irrationality and procedural impropriety, and that the Court would not assume the role of an appellate authority to substitute its decision with that of the decision making authority in matters relating to tenders (See **Tata Cellular v. Union of India**).

A Division Bench of this Court, in **TCI Seaways Ltd. v. FCI, Regional Officer, HACA Bhavan, Hyd.,** after referring to the various decisions of the apex Court on the subject, had succinctly summarized the principles to be applied in exercise of power of judicial review in contractual matters, and it would be apposite to quote:

> While examining legality of the action of the administrative authority, the Court must confine itself to the aspects – whether the decision making authority has exceeded its powers, committed an error of law or there is breach of principles of natural justice or abused its powers or reached decision which no reasonable Tribunal would have reached. The Court is not empowered to determine whether a particular policy is fair. An administrative action is subject to control by judicial review only in regard to illegality or irrationality, namely Wednesbury unreasonableness and procedural impropriety. The modern trend points to judicial restraint in administrative action. The Court is not empowered to interfere with the decision taken by an expert body and substitute its opinion to that of the body unless the decision is tainted with mala fides or for extraneous considerations. Where the matter involved required commercial or technical prudence and the decision reached is based on the opinion of a technical committee, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot interfere with such decision unless the allegations regarding unreasonableness, mala fides and collateral considerations are unassailable or can be assailed on a finding of mala fides or extraneous considerations. The terms of the invitation to tender cannot be open to judicial scrutiny as the invitation to tender is in the realm of contract. **Where the matter relates to commercial considerations, the State, its corporations, instrumentalities and agencies can choose its own method to arrive at a decision and it may not accept the offer even though it happens to be the highest or the lowest, subject, of course to the adherence to the norms, standards and procedure laid down by them. The Court can examine the decision making process and interfere only if it is found vitiated by mala fides, unreasonableness, favouritism and arbitrariness**. Even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and restraint and exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind whether any intervention is called for or not. Unless the decision making process is manifestly arbitrary or unreasonable or the authority committed any procedural impropriety, it cannot be called in question.
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> (emphasis supplied)

This being the legal position, we may consider whether the decision taken by the respondent to reject the tender of the petitioner on the grounds enumerated below, is fraught with illegality, irrationality and procedural impropriety:

1. Tender schedules separated.
2. The tender schedule not signed on each and every page by the tenderer.
3. Warranty certificate not produced along with quotation.

According to the terms and conditions of the Tender Document, the bidders are required to submit their bid in two envelopes – (i) containing the bid security, and (ii) containing the price bid, and the envelopes should be superscribed as “bid security” and “price bid”, which again are required to be placed in a sealed cover, superscribed thereon “bid for supply of medicine/drug to CGHS dispensaries”. It is the contention of the respondent that though the petitioner submitted the tender bid in two envelopes, he had kept the “bid security” amount along with the “price bid” envelope and detached the “price bid pages”, namely page Nos. 13 and 14 from the Tender Document, and enclosed the same in another envelope. As the petitioner detached Page Nos. 13 and 14 from the Tender Document, his tender was disqualified, and more so when as per Clause 1 of the Tender Conditions, the schedule to the bid form should be retained and not detached, and in case of any modification of the schedule, the bidder was required to communicate the same by separate letter sent along with the bid. The petitioner, though detached Page Nos. 13 and 14 from the Tender Document, he did not communicate the same to the respondent by separate letter sent along with the bid, and had he communicated about the modification to the respondent by separate letter, his tender would not have been disqualified. Inasmuch as it is stated that the petitioner had kept the “bid security” along with the “price bid”, in that in one envelope and placed the detached Page Nos. 13 and 14 of the Tender Document in another envelope meant for “price bid”, no exception can be taken to the action of the respondent in disqualifying the tender of the petitioner on that ground. When the Tender Document required the petitioner to submit the tender in the manner prescribed, it is not open for the petitioner to deviate from the same, and contend that as the deviation in the submission of the tender not being so serious so as to cause prejudice to anybody, his tender could not have been rejected, and merely because the respondent has opened both the envelopes, it does not give any right to the petitioner to contend that his bid should be qualified because he came to know that his was the lowest tender.

Tender Documents and Schedules, admittedly, are legal documents, for they confer contractual duties and obligations on the petitioner in case his tender is accepted, and therefore, it is obligatory on the part of the tenderer to sign on all on the pages of the Tender Document, irrespective of whether there exists a condition to that effect, for in case any page is left unsigned or is removed or any disputes arise out of the same, there is every scope of the document being invalidated on account of all the pages in the document not being signed. Be that as it may, it is not the case of the

petitioner that the tenders of those persons who have not signed on all the pages have been qualified for participation in the tender, and that he has been discriminated. Therefore, no exception can be taken to the action of the respondent in rejecting the tender of the petitioner on that ground also.

As per Clause No. 20 of the Tender Conditions, the bidder is required to furnish along with the quotation, the warranty certificate. Irrespective of whether the warranty certificate asked for by the respondent, was in the nature of a requirement to be met in the event of the bid being accepted and that too before or making the supplies, the fact remains that the petitioner has himself admitted that he had not furnished the warranty certificate along with the quotation. When Clause 20 of the Tender Document clearly stipulated that the bidder shall furnish along with the quotation the warranty mentioned thereunder, it was incumbent upon the petitioner to furnish the same, without reading into the provision and contend that the warranty certificate asked for by the respondent would arise or would be required to be furnished only in the event his bid being accepted and he makes the supplies under the contract.

Though the petitioner has contended that the respondent had mala fide rejected his tender to show favoritism to his rivals in the business, he has not named who his rival is, and in the absence of any specific attribution made to the respondent that the respondent was favouring a particular person, the said contention cannot be countenanced. Further, it is not the case of the petitioner that the respondent in the case of tenders of his rivals or persons, even though not having been submitted in accordance with the Tender Conditions, yet had entertained them and discriminated him. Be that as it may, the petitioner having violated the conditions of the tender, no exception can be taken to the action of the respondent in rejecting the tender of the petitioner, and more so when the right of acceptance or rejection of the tender without assigning any reasons is vested in the respondent.

In the rejection of the tender, the respondent has followed the Tender Conditions, and the action of the respondent in doing so, by no means can be said to be fraught with illegality, irrationality or procedural impropriety, warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 30th December, 2004.

SVV/KSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Additional Director General,
   Government Health Scheme, Government of India, Begumpet,

Hyderabad.

2. Two CD copies.